



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON, D.C. 20370-5100

TRG

Docket No: 4000-00

11 October 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552
(b) DODINST 1332.28

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Naval Reserve filed enclosure (1) with this Board requesting that his record be corrected to show that he transferred to the Retired Reserve under the provisions of the Reserve Transition Benefits (RTB) program.

2. The Board, consisting of Mr. Pfeiffer, Mr. Milner and Mr. Carlson, reviewed Petitioner's allegations of error and injustice on 3 October 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner reenlisted in the Naval Reserve on 5 November 1979 after a break in service of over 25 years and served continuously in the Naval Reserve and earned qualifying years after that date. On 14 March 1991 he reenlisted for six years at age 58. At that time he had completed about 15 years of qualifying service for reserve retirement. On 30 May 1993 he was dropped from a pay billet. Later that year, on 12 August 1993, he was transferred to a records review status because of his physical problems. At that time he was credited with 16 years, 5

months and 6 days of qualifying service. There are no discharge entries in the record. However, the expiration of the six year enlistment was 13 March 1997. Petitioner became 60 years of age on 31 May 1993.

d. The "Temporary Special Retirement Qualification Authority" was enacted into law in 1992 and is codified at Title 10 U. S. C. 12731a. The law allows retirement of reservists with 15 years of qualifying service during the period 23 October 1992 to 1 October 1999. Subsequently, the law was modified as follows:

... the Secretary concerned may, consistent with the other provisions of this section, provide the notification (of eligibility for retired pay at age 60) to a member who no longer meets the qualification for membership in the Selected Reserve solely because the member is unfit because of a physical disability.

Reference (b) states, as it applies to Subject's case, that individuals who have over 15 years of qualifying service and are to be separated for physical disability shall be afforded the opportunity to elect either separation for physical disability or early qualification for retired pay at age 60 under Section 1273.a of Title 10.

e. Attached to enclosure (1) is a letter from the Commander Naval Reserve Force which states, in part, as follows:

Prior to the Fiscal Year 1995 National Defense Authorization Act of October 5, 1994, one of the requirements for Reserve Transition Benefits was that the member must be physically qualified for retention in the Naval Service. When (Petitioner) applied in November 1993, he had been found not Physically Qualified by the Bureau of Medicine and Surgery.

f. The Board is aware that the Uniform Retirement Date Act 5 U. S. C. 8301 requires that the effective date of any retirement be the first day of the month.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that Petitioner was erroneously enlisted in 1979 because he had insufficient time to qualify for reserve retirement at age 60. As indicated, on his 60th birthday he had only accumulated 16 years of qualifying service. The Board also notes that if he had requested retirement prior to being found

not physically qualified he would have met the requirements for retirement under the RTB. Given the circumstances, the Board concludes that the record should be corrected to show that he transferred to the Retired Reserve.

Therefore, the record should be corrected to show that he transferred to the Retired List in the rate of IM1 (E-6) on 31 May 1993, his 60th birthday. This date is prior to the date he was found not physically qualified and transferred to records review status.

The Board further concludes that this Record of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand his status on the Retired List.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he transferred to the Retired List in the rate of IM1 on his 60th birthday, 31 May 1993.

b. That this Report of Proceedings be filed in Petitioner's naval record.

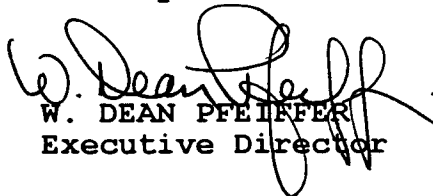
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director